

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench : Hon'ble Shri Justice Satish K. Agnihotri

Writ Petition (S) No. 1623 of 2007

Ram Chandra Sahu

Versus

State of Chhattisgarh & Others

ORDER

Post for 2 -04-2007

**Sd/-
Satish K. Agnihotri
Judge**

(38)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench : Hon'ble Shri Justice Satish K. Agnihotri

Writ Petition (S) No. 1623 of 2007

Petitioner :

Ram Chandra Sahu, S/o Jamuna Prasad Sahu, Aged about 33 years, Residence of Village Ranai, Thana Patna, Tahsil Baikunthpur, Distt. Korea (CG).

Versus

Respondents :

1. State of Chhattisgarh, Through Secretary, Department of Home Affairs, D.K.S. Bhawan, Raipur (CG).
2. Director General of Police, Police Head Quarter, Raipur (CG).
3. Inspector General of Police, Surguja Range, Ambikapur, Distt. Surguja (CG).
4. Superintendent of Police, Baikunthpur, Distt. Korea (CG).

Present :-

Shri Mahendra Dubey, counsel for the petitioner.

Shri Arvind Dubey, Panel Lawyer for the State/respondents.

ORDER

(Delivered on 2nd April, 2007)

By this petition filed under Article 226 of the Constitution of India, the petitioner impugns the letter dated 25-4-2006 alongwith letter dated 4-4-2006 (both letters marked as Annexure-P/1) whereunder the selection of the petitioner to the post of Constable (GD) was cancelled on the ground that he has deliberately concealed the fact of pendency of a criminal case against him in the attestation form, which was filed after due selection.

(S)

2) The indisputable facts in nutshell are that the petitioner alongwith others made an application, pursuant to the advertisement dated 30-3-2005 (Annexure-P/2), for appointment to the post of Constable (GD). The prescribed proforma of the application form (Annexure-P/3) required following information in columns 15 and 16 :

15. Have you ever been -----
arrested, if, yes, give
details :

16. Have you ever been -----
prosecuted in any case.
Have you ever been
convicted by any Court, if,
yes, give full details :

In the aforesaid columns, the petitioner put the cross (x) marks. After having been selected in the written test and physical test as per the selection dated 20-6-2005 (Annexure-P/4) the petitioner was required to fill up the attestation form. In the attestation form (Annexure-P/5) there was a specific column i.e. column 12, which reads as under :

"(12) A. Have you ever been arrested. Have you ever been prosecuted. Have you ever been summoned. Have you ever paid penalty. Have you ever been convicted by a Court (or) Have you ever been declined to appear in any examination or expelled from the University/ educational institution.

B. Whether at the time of filling up the attestation form any case is pending in the Court, University or educational institution. If your answer in both cases of (A) or (B) is yes, give complete details of the pending case, arrest, ban, conviction, penalty, etc. and details of the pending case in the Court, University or educational institution.

In the aforesaid columns, the petitioner has stated "no". Thereafter, according to the petitioner, at the advise of his well wishers, by letter dated 12-9-2005 (Annexure-P/7) he corrected his mistakes and submitted the complete details of pendency of criminal case under Section 498-A of the Indian Penal Code (for short "the IPC") in the Court of Chief Judicial Magistrate,

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Baikunthpur, District Korea. The respondents vide impugned letters dated 25-4-2006 and 4-4-2006 (Annexure-P/1) cancelled his selection informing that he had not given the details of criminal case registered against him in column 12 of the attestation form, which tantamounts to suppression of material facts.

3) Being aggrieved and dissatisfied with the impugned letters, the petitioner has filed this petition on the ground that he immediately vide letter dated 12-9-2005 (Annexure-P/7) submitted the correct facts of pendency of the criminal case during the filling up of the attestation form thus this is not a case of *suppresio veri and suggetio falsi*.

4) Shri Mahendra Dubey, learned counsel appearing for the petitioner would submit that since the petitioner has informed the authorities immediately by letter dated 12-9-2005 about the correct facts of the pendency of the criminal case, this does not amount to misconduct as to disqualify the petitioner from being selected in the Police force as Constable. Secondly the offence under Section 498-A of the IPC has been compounded vide order dated 7-10-2005 (Annexure-P/6) passed by this Court in M.Cr.C.No.2043/2005 (Ramchand Sahu & Others vs. State of Chhattisgarh & Another) and the husband and wife are living peacefully. Learned counsel relies on a decision of the Supreme Court in the case of Commissioner of Police, Delhi and another vs. Dhaval Singh¹, in support of his contention.

5) Shri Arvind Dubey, learned counsel appearing for the State, per contra, would submit that this is not a case of voluntary disclosure of facts. The petitioner himself has committed this mistake not once in the attestation form, but also in the application form. The intention of the petitioner is very clear from the facts that he had deliberately concealed the facts while making the application in the prescribed proforma and next time in the attestation form

¹ (1999) 1 SCC 248



wherein there was a specific requirement of stating the fact as to whether any criminal case was pending or not.

6) The petitioner further admits in his petition that vide letter dated 12-9-2005, he informed the authorities about the correct facts at the advise of his well wishers, not on his own voluntarily.

7) Having heard learned counsel for the parties and perused the pleadings and documents appended thereto, it is evident that the petitioner did not fill up the application form correctly and concealed the fact of pendency of a criminal case by putting cross (x) marks in columns 15 and 16 and further after selection in the attestation form also the petitioner had boldly stated "no", in response to query that whether any criminal case was pending in any Court or not. The petitioner submitted the facts correctly, later on, at the advice of his well wishers by sending a letter dated 12-9-2005 about three months from the date of filling up the attestation form on 24-6-2005 stating the facts of pendency of criminal case at the time of making an application and at the time of filling up of the attestation form. The concealment of facts would result into cancellation of his selection.

8) So far as reliance of the petitioner in the case of Commissioner of Police, Delhi (supra) is concerned, the facts involved therein were entirely different. In that case the omission in the application form about the pendency of the criminal case was voluntarily conveyed within a period of three months. In the present case the petitioner has not conveyed the letter dated 12-9-2005 voluntarily, but at the instance of his friends and well wishers. He omitted to mention about the pendency of criminal case not only in the attestation form, but also in the application form. It appears to be a case of *suppresio veri and suggestio falsi*.

9) In the case of **Collector of Customs, Calcutta vs. Tin Plate Co. of India Ltd.**², the Hon'ble Supreme Court while dealing with the question of suppression of facts in Customs Act observed that the suppression of facts envisages a deliberate or conscious omission to state a fact with the intention of deriving wrongful gain.

10) In the case of **Kendriya Vidyalaya Sangathan and others vs. Ram Ratan Yadav**³, the Supreme Court, in the identical facts of the case, held as under :

12. The object of requiring information in columns 12 and 13 of the attestation form and certification thereafter by the candidate was to ascertain and verify the character and antecedents to judge his suitability to continue in service. A candidate having suppressed material information and/or giving false information cannot claim right to continue in service. The employer having regard to the nature of the employment and all other aspects had the discretion to terminate his services, which is made expressly clear in para 9 of the offer of appointment. *The purpose of seeking information as per columns 12 and 13 was not to find out either the nature or gravity of the offence or the result of a criminal case ultimately. The information in the said columns was sought with a view to judge the character and antecedents of the respondent to continue in service or not.* The High Court, in our view, has failed to see this aspect of the matter. It went wrong in saying that the criminal case had been subsequently withdrawn and that the offences, in which the respondent was alleged to have been involved, were also not of serious nature....."

11) In the case of **Secy., Dept. of Home Secy., A.P. and others vs. B. Chinnam Naidu**⁴, referring the case of **Kendriya Vidyalaya Sangathan** (supra) the Supreme Court held as under :

"As is noted in *Kendriya Vidyalaya Sangathan* case the object of requiring information in various columns like column 12 of the attestation form and declaration thereafter by the candidate is to ascertain and verify

² (1997) 10 SCC 538

³ (2003) 3 SCC 437

⁴ (2005) 2 SCC 746

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the character and antecedents to judge his suitability to enter into or continue in service. When a candidate suppresses material information and/or gives false information, he cannot claim any right for appointment or continuance in service. There can be no dispute to this position in law."

12) Applying to the well settled principles of law as laid down by the Supreme Court to the facts of the present case, it is not a case where the petitioner has voluntarily supplied the information of the fact with regard to pendency of the criminal case by subsequent letter dated 12-9-2005. In the present case the petitioner has deliberately concealed the facts as he has made omission in the application form as well as in the attestation form. Thus, this is a case of *suppresio veri and suggetio falsi*. As such the petitioner is not entitled to appointment/continuation in service.

13) For the reasons stated hereinabove, the impugned letters dated 25-4-2006 and 4-4-2006 (Annexure-P/1) are just and proper and need no interference. The petition is accordingly dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Gowri